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*Justice Matthew O. Tobriner
Memorial Lecture[†]*

“Muslim Rage” and Islamic Law^{††}

by
WAEL B. HALLAQ*

There is now little that is novel in the idea that the tragic events of September 11, 2001, brought home to the United States an imminent danger, one never encountered before. For the first time in American history, a brutal attack was made in the heartland, one that carried with it devastating consequences. This tragedy was no doubt surprising, not only because it happened at all but also because it happened in the way and in the places that it did. Yet, what is equally surprising, particularly in light of its magnitude, is the little attention it drew in the way of sober analysis. There was little, if any, attempt to understand where its causes lay, and how closely it may have been tied to the phenomenon that we call—in truly abstract, confused, and indiscriminate ways—Islam.

It has been often said, before September 11 and since, that such hostile acts as terrorism are precipitated by Islamic fundamentalism and its advocates. Observers less sympathetic to Islam and Muslims have tended to see the violence as causally connected with the entire religion of Islam as a culture and creed. These observers have imputed to the religion and culture certain qualities, nearly genetic in nature, which make it inherently hostile and violent. In the West, Islam has nowadays come to be a synonym for aggression and violence. Unfortunately, such essentialist views were sometimes propounded by highly politicized academics who had spent decades studying Islamic history and culture.

† The Matthew O. Tobriner Memorial Lecture, University of California, Hastings College of the Law, San Francisco, California, March 5, 2003. The annual Matthew O. Tobriner Memorial Lecture was established in honor of former California Supreme Court Justice and former Hastings faculty member Matthew O. Tobriner. Each year Hastings College of the Law sponsors a lecture by a distinguished legal scholar or prominent personality to build on the legacy of Justice Tobriner's outstanding accomplishments as a legal scholar and jurist.

†† The Lecture was titled “Traditional Law and the Legal Crises of Modern Islam.”

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There is no doubt that an intelligent and dispassionate analysis of the situation requires not only the total abandonment of what I call the "genetic approach," an approach that is both dangerous and fruitless; it requires a careful and open-minded examination of the phenomenon concerned, so that we can make sense of its constitution, orientation, and, no less importantly, how it historically came to be. To arrive at a genuine understanding of the problem, it is also essential to set aside one's own ideological centrality, for insistence on the latter will not only lead nowhere but will replicate—indeed exacerbate—the problem. In fact, dealing with Islam from where we stand today amounts to dealing with the "Other," while the challenge of gaining a correct understanding as to why the Muslim world seems at odds with Western values and Western ways—be they political, cultural, or otherwise—requires as much impartiality as one can muster. A prerequisite for such an understanding is the appreciation on our part of the indelible connection that Muslims feel with God, a tie that the Christian West for the most part severed long ago. The idea of giving to Caesar what is Caesar's and to God what is God's does not wash in the Muslim world-view, for Caesar is only a man, and men, being equal, cannot command obedience to each other. Obedience therefore must be to a supreme entity, one that is eternal, omnipotent, and omniscient. If modernity has effected profound changes in Islamic culture (and no doubt it has), it has failed in the most important respect, namely, to alter or sever this tie with the divine. In due course we shall see that, in reaction to the last century's experience, today's Muslims have reaffirmed this tie in ever-stronger terms. To demand of them that they abandon their God is not only unfair and supercilious but will, more importantly, lead only to a repeat of the mistakes made during the recent and not-so-recent past.

The events of September 11 must be seen as the tip of the iceberg, a culmination, that is, of a massive historical process that originated a century and a half ago, and that in time intensified with disastrous results. With the burden of a century and a half of a history that has gone awry, it behooves us to look at it carefully. Surely, the causes of Muslim discontent are many—political, social, economic, ethical, and much else. Yet, a common thread of an eminently legal sort runs through all these causes; if these causes are the warp of the phenomenon concerned, then the legal element is certainly its woof. The question then is: How does law figure in the equations of violence and hostility? Why should law, in other words, have to do in the least with such horrific acts as the murdering of civilians?

It should not come as a surprise that of all the factors that may account for the Islamic fundamentalists' acts and world-view, law stands foremost, competing in importance with the political—a significant other category. Yet, despite the importance of things legal to the individual Muslim and to the entire culture of Islam past and present, the emphasis placed on explaining "the roots of Muslim rage" has been primarily political, but not without dire epistemological consequences which

strongly tended to obscure intelligent analysis rather than enhance it. But even the rise of new political structures in the Muslim world cannot be seen as the result of purely political considerations, for at the heart of Muslim politics and political theory, and at the basis of their conduct and conception, there lies a significant deposit, if not a rich substrate, of law.

In what follows, I shall attempt to map out the contours of the historical developments that led Muslims to the present predicament, one that is entrenched in despair, fear, and alienation. To appreciate the full force of this predicament, we must briefly look at the cultural role Islamic law played in the lives of Muslims for over thirteen centuries; at the essential fact that Islam was a religion and culture of law; at the fundamental legal transformations the Muslim world has undergone during the last century and a half; at the political implications of these legal transformations; and finally at the combined effects of these structural, legal, and political transformations as indices of what has become a mutilated cultural identity.

It would in no way be an exaggeration to argue that law was the defining characteristic of Muslim societies and civilizations throughout the centuries, and in every corner of the Islamic world, ranging from Indonesia and Malaysia to Algeria and Morocco. As Joseph Schacht, the distinguished father of Islamic legal studies in the West, put it some forty years ago, "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself. . . . [T]he whole life of the Muslims, Arabic literature, and the Arabic and Islamic disciplines of learning are deeply imbued with the ideas of Islamic law; it is impossible to understand Islam without understanding Islamic law."¹ With the benefit of hindsight, and considering the developments that have taken place since the Islamic revolution of Iran in 1979, Schacht's acute observations are more true now than ever. One may even add that law defined not only the Muslim way of life, but also the entire culture and psyche of Muslims throughout fourteen centuries. Islamic law governed the Muslim's way of life in literally every detail, from political government to the sale of real property, from hunting to the etiquette of dining, from sexual relations to worship and prayer. It determined how Muslims conducted themselves in society and in their families; how they designed and ordered their cities and towns; and, in short, how they viewed themselves and the world around them. If Islamic civilization, culture, or state ever constituted a regime of any kind, it was one of nomocracy. There has never been a culture in human society so legally oriented as Islam. With the recent significant advances in our scholarship on the history of Islamic law, we have come to realize—more than ever—that Islamic law was not merely a legal system that resolved conflicts and negotiated social and economic relationships (the role normally assigned to law in the West), but that it was in addition a theological system, an applied religious

1. JOSEPH SCHACHT, *AN INTRODUCTION TO ISLAMIC LAW* 1 (1964).

ritual, an intellectual enterprise of the first order, a cultural pillar of far-reaching dimensions and, in short, a world-view that defined both Muslim identity and even Islam itself.

Politics was subsidiary to law and entirely subservient to it. This is a fact of paramount importance, dictating much of what happened between the rise of Muhammad and the early nineteenth century. The Caliph and Sultan saw themselves and were seen by all others as subject to the holy law of God. And sure enough, notwithstanding the occasional violation, both rulers and their agents took this divine superiority for granted and as a rule conducted themselves in accordance with its dictates. If there is one inalienable feature of the Muslim body politic and legal culture it is the prevalence of the rule of law, with the political sovereign accepting without challenge the supreme authority of the divine law and hence that of the jurists and judges—custodians of the law and its interpreters as well as the civic leaders of the Muslim communities wherever they were present. No ruler or political might could challenge the divine law and its spokesmen. The rich, the powerful, and the poor, from sultan to pauper, all stood as equals in the presence of the humble, informal Muslim court to receive judgment. There were no special rules for the mighty, and none could question their eternal submission to the law of God. The Law was deemed to stand above anything human.²

It is this recognition on the part of the state and its functionaries that has preserved the distinction between worldly power and the province of the law. And it is this recognition that rendered the law so remarkably independent throughout twelve centuries of Islamic history. The state's legal power was accordingly limited to the appointment and dismissal of judges, and no doubt the state used this prerogative to exercise as much influence as it could muster. But the state had also accepted the fact that, once the judge was appointed, it could do nothing but bow to the Law as applied by the court. Judicial independence and the rule of law no doubt represented two of the most striking features of traditional Islamic cultures.³

The Muslim court applied what we may call "jurists' law," an expression bearing much significance. Islamic law is properly defined as jurists' law because it is a product of the jurist's hermeneutical labors, based, as it were, on the revealed texts and the methods of interpretation that were seen to derive from these very sources. The Quran stood supreme as an authoritative legal text, but the major bulk of the law

2. On the relationship between law and politics, see W. HALLAQ, *THE ORIGINS AND EARLY EVOLUTION OF ISLAMIC LAW AND JURISPRUDENCE* ch. 6 (forthcoming) [hereinafter HALLAQ, *ORIGINS*]; MUHAMMAD QASIM ZAMAN, *RELIGION AND POLITICS UNDER THE EARLY 'ABBASIDS: THE EMERGENCE OF THE PROTO-SUNNI ELITE* chs. 3-4 (1997).

3. That actual violations of the rule of law did take place should not negate the centrality of the principle and its dominant functioning within Islamic legal cultures. Such violations could have no more been detrimental to the rule of law than certain covert (and now not so covert) acts of the American government during the past half-century.

derived from the Sunna of the Prophet, those utterances and deeds attributed to the founder of Islam. Juristic consensus and the inferential method known as *qiyas* provided the mechanisms for elaborating, in terms of legal reasoning, the raw subject matter of the revealed texts. Without *qiyas* and the entire system of legal hermeneutics developed by the jurists, the revealed texts would remain empty of legal significance, for it was this hermeneutic that brought out their legal import. In other words, God did not reveal a law proper but only textual signs or textual indications that required the intervention of the human rational faculty in order to bring out into a human reality what was seen as a sacred law. Thus, if God revealed the basic building blocks of the law, it was the jurists who built the House of Shari'a.⁴

The authority of the jurists, however, must not be confused with any notions of worldly power, since they wielded none. Nor was their authority of the charismatic or even moral type, though these types of authority were not entirely precluded. Nor, yet, was their authority purely religious, for the Islamic scene witnessed a number of learned religious classes who, despite their impressive erudition and intellectual output, were entirely devoid of legal authority. The jurists' authority was predominantly, if not essentially, epistemic.⁵ Their very learning and erudition bestowed on them the authority that they enjoyed, in the first place the authority to interpret the law, but also the authority to command what is morally good and forbid what is morally bad, to lead and administer society and its civic institutions, to collect taxes, to represent the orphans and the downtrodden, to run educational institutions and law schools, and to supervise charities and public works.⁶

If the jurists enjoyed an over-arching authority as civic leaders, their authority as legal interpreters stood paramount. This authority derived in no small part from their ability to wield the interpretive tool known as *ijtihad*, i.e., the profound hermeneutical competence to engage the divine word in the mundane, worldly affairs of human reality. The perfect cultivation of this hermeneutic meant an ability to decipher what God—in all probability—wanted Muslims to do or not do, this being the deontic basis of law. It meant, in other words, the epistemic and intellectual competence to make God's will apparent to humans. And there was something extraordinary in the very fact that all this amounted to the ability—erudite and scholarly from first to last—to enter, or try to enter, into God's mind.

4. On legal reasoning and the methodology of law, see BERNARD G. WEISS, *THE SEARCH FOR GOD'S LAW* (1992); WAEEL B. HALLAQ, *A HISTORY OF ISLAMIC LEGAL THEORIES* chs. 2–3 (1997) [hereinafter HALLAQ, HISTORY].

5. On epistemic authority in Islamic law, see WAEEL B. HALLAQ, *AUTHORITY, CONTINUITY, AND CHANGE IN ISLAMIC LAW* (2001).

6. On these functions, see Emile Tyan, *Judicial Organization*, in *LAW IN THE MIDDLE EAST VOLUME 1: ORIGIN AND DEVELOPMENT OF ISLAMIC LAW* 236 (Majid Khadduri & Herbert Liebesny eds., 1955); EMILE TYAN, *HISTOIRE DE L'ORGANISATION JUDICIAIRE EN PAYS D'ISLAM* (2d ed. 1960).

It was this power of hermeneutic that elevated these jurists to the highest social and political ranks, so much so that they embodied the counterbalance and equalizer of temporal might. Politics and the body-politic itself were deemed, by default, the province of worldly temptation and corruption. By virtue of this fact, the judge who was appointed and paid by the state became suspect. The Islamic legal literature is replete with references to the precarious and dubious role of judges as agents of corrupt politics. Receiving an appointment as a judge was, for the appointee and his family, a cause for lament, associated with a strong sense of adversity. Many jurists preferred to be whipped or jailed rather than accept judicial appointment.⁷ It is not an exaggeration to say that such an appointment, once accepted, diminished the personal authority of the jurist, and exposed him to suspicion—if not actual charges—of corruption and lack of rectitude. Thus, the Islamic legal profession seems to have been consistent in dissociating itself from the state and its temporal might, and largely succeeded in doing so for over a millennium—that is, until the middle of the nineteenth century.⁸

It is therefore accurate to say that Islamic law was a system that operated outside of state and government influence, constituting in effect its counterbalance. And it did so with remarkable independence and success. This dichotomy found eloquent expression in the metaphor that the sword's true counterpart is the pen, the hallmark of the jurist and the religious scholar. This pen, without any doubt, was responsible for the creation of a body of law and an intellectually and culturally imposing jurisprudence that persisted with creative tenacity until the middle of the nineteenth century.

Recent scholarship on the history of Islamic law—especially in the United States, Canada, and Germany—has shown the impressive extent to which Islamic law was a working system that evolved in tandem with the developments that Islamic societies from Transoxania to Andalusia and the Maghreb experienced over the centuries. These relatively new findings stand in opposition to the discourse that dominated the field for decades, roughly from the middle of the nineteenth century until the seventies of the last. Once dominated by the civil servants of the imperial powers, conventional scholarship—mainly European—found it imperative to relegate Islamic law to the status of a relic of the past, and viewed it furthermore as archaic, rigid, primitive, and incapable of change. Needless to say, this is not entirely unexpected, since it was necessary for these civil servants, who functioned concomitantly (and inextricably) as colonial administrators and scholars, to rationalize their empires' domination and imposition of new legal and other structures.⁹

7. HALLAQ, ORIGINS, *supra* note 2, at ch. 8.

8. *Id.* at ch. 6.

9. Wael B. Hallaq, *The Quest for Origins or Doctrine? Islamic Legal Studies as Colonialist Discourse*, 2 UCLA J. OF ISLAMIC AND NEAR EASTERN L. 1, 1–31 (2002–03). This discourse is echoed in a variety of other intellectual spheres. See, for example, the work of EDWARD SAID, *ORIENTALISM* (1978); THIERRY HENTSCH, *IMAGINING THE MIDDLE EAST* (Fred A. Reed trans., 1992); MEYDA

For already, beginning with the middle of the nineteenth century, Islamic law had undergone a process of change that was to lead to its virtual, if not total, decimation. Happily, direct colonialism is a thing of the past (or one so hopes), and scholarship now appears somewhat freer from the cultural assumptions of domination. The result has been a near-total revolution in Islamic legal studies, especially during the last two decades. It is readily acknowledged nowadays that there was no dislocation between Islamic law and the society that it served; that law was socially linked throughout; and that it responded to the challenges of social and economic change until its near-total decimation in the nineteenth and early twentieth centuries.

One of the most fundamental questions that arises from this brief account is: If Islamic law served Muslim societies so well, and if Muslim loyalties were to the law before anything or anyone else, then why was the Law of God decimated? What conceivable purpose could this momentous act have served? The answer to this question is by no means easy to provide within the space permitted here, but it is not difficult to summarize it in outline.

By the early eighteenth century, the Ottoman Empire had ceased to threaten the gates of Vienna and had begun a process of decline, while European states experienced a simultaneous technological and economic advance. This rise ushered in a new relationship between the Islamic East and Europe, which embarked on a policy of colonization aimed at its immediate Muslim neighbors as well as the Muslim kingdoms and sultanates in far away lands. The British, French, Spaniards, Portuguese, and Dutch, among others, conquered massive territories and exercised direct and indirect colonial control over them. One of the last to fall into disarray was the Ottoman Empire, most of whose possessions, save for modern day Turkey, were divided in 1916 among the British and the French in what is known as the Sykes-Picot Agreement.¹⁰ With this near-total conquest, the Muslim world, except such (then) impoverished regions as Saudi Arabia, faced an unprecedented wave not only of military and economic colonization but, more importantly, the modernizing effects of Europe. But even before World War I, the Ottoman Empire had been forced into a program of political and administrative restructuring whereby the initial steps toward government centralization were affected. This restructuring aimed at, and resulted in, the formation of what was to become the nation-state, an entity alien to the indigenous cultures of Muslim lands. It is in this newly emerging

YEGENOGLU, COLONIAL FANTASIES: TOWARDS A FEMINIST READING OF ORIENTALISM (1998); A.L. Tibawi, *English-Speaking Orientalists: A Critique of Their Approach to Islam and Arab Nationalism*, 8 ISLAMIC Q. 25, 25-45, 73-88 (1964); JACQUES WAARDENBURG, L'ISLAM DANS LE MIROIR DE L'OCCIDENT: COMMENT QUELQUES ORIENTALISTES OCCIDENTAUX SE SONT PENCHÉS SUR L'ISLAM ET SE SONT FORMÉ UNE IMAGE DE CETTE RELIGION: I. GOLDZIER, C. SNOUCK HURGRONJE, C.H. BECKER, D.B. MACDONALD, LOUIS MASSIGNON (1969).

10. See ALBERT HOURANI, A HISTORY OF THE ARAB PEOPLES 315-19 (1991).

phenomenon that one must seek an explanation for the ultimate demise of traditional law and legal institutions.¹¹

The creation of the nation-state meant, indeed required, a decisive transfer of power—largely devoid of authority—from the hands of the traditional legal elites into those of the new state. The traditional legal profession stood at the heart of the old institutions that were the target of modernization, while the nation-state could not have become a reality without appropriating these institutions. The legal profession originally controlled the administration, and therefore the revenues, of charitable trusts (*awqaf*) that formed the backbone of both the urban economy and legal education. By the beginning of the twentieth century these trusts had largely been either confiscated or placed under the direct management of state agencies. This move ushered in a new era during which the traditional legal profession gradually lost control over its own sources of power, making its members heavily dependent on state allocations which in turn diminished in a steady and systematic manner.

Furthermore, the chipping away of the powers of the religious elite was accelerated by the creation—under colonialist pressure—of alternative legal elites and new legal structures that began to be formed as early as the middle of the nineteenth century. A new body of legal professionals, trained in Western or Western-style institutions, began to displace the traditional legal profession. With the adoption of Western-style law schools and hierarchical courts, these new elites were easily incorporated into the emerging legal structures, while, at the same time, the religious lawyers found themselves both marginalized and severely unequipped to deal with the new reality. The new Western courts operated on the basis of codes, and the lawyers who staffed them had little, if any, knowledge of the workings of religious law, whether doctrinally, judicially or otherwise. On the other hand, while the foreign importations were incomprehensible to the traditional legal hierarchy, their law colleges—which depended almost exclusively on the dwindling revenues of charitable trusts—were systematically pushed aside and later totally displaced by the modern university's law faculties. The traditional legal specialists lost not only their judicial positions as judges, legal administrators and court officials, but also their teaching posts and educational functions—in short, the backbone of their very existence as a profession. This loss constituted a *coup de grace*, for not only did it rob them of their careers but also of their procreative faculties: they were no longer allowed to extend their intellectual pedigree. The ruin of the traditional law college—in which the jurists, judges and jurisconsults had been trained—was the ruin of Islamic law, for the college's compass of activities epitomized all that had made Islamic law what it was.

To ensure the total subordination of law to the newly rising nation-state, codification became the standard mode of legislation. Codification

11. See Wael B. Hallaq, *Can the Shari'a Be Restored?*, in *ARAB LEGAL SYSTEMS IN TRANSITION* (Barbara Stowasser & Yvonne Haddad eds., forthcoming).

is not an inherently neutral form of law-making, nor is it an innocent tool of legal practice, devoid of political or other goals. It is in fact a deliberate choice in the exercise of political and legal power, a means by which a conscious restriction is placed upon the interpretive freedom of jurists, judges and lawyers. In the Islamic context, the adoption of codification had a particular significance since it represented a highly efficacious *modus operandi* through which the law was refashioned and altered in fundamental ways. No longer could the traditional jurists rely on their hermeneutical methods to determine what the law was; the new order had severed the organic link between the divine texts and the positive legal stipulations deriving therefrom. The mechanism of interpretation, the backbone of Islamic law and the only link between the divine and the human, ceased to operate.

Codification was not the only structural change that was introduced. Another acute, if not traumatic, change was effected by the importation, under colonial pressure, of an endless variety of European codes, at times lock, stock, and barrel. The first of these was the Ottoman Penal Code of 1858, closely modeled after the French Penal Code of 1810. In 1860, the Ottomans adopted as their own, without change or adaptation, the French Commercial Code of 1807 (cultural, social, and legal differences between the Middle Eastern Ottomans and the European French did not seem to matter!). In 1863 and 1880, the Ottomans also freely borrowed the French Maritime Law and the Law of Civil Procedure, respectively. This wave of massive borrowings extended to other European sources, including the Swiss, German, English, and Italian codes of law. Later, with the emergence of the nation-states after World War I, there were attempts at synthesizing the Islamic and European laws, and in this process it was Egypt that led the way. By the 1970s, the Muslim world had been, legally speaking, dramatically Westernized. It was only the law of personal status that continued to retain provisions from the traditional Islamic law, although this area too was codified.¹²

Having codified the law on the basis of Western legal models, and having virtually decimated the infrastructure of the traditional legal profession, the nation-state jettisoned Islamic law altogether and reigned supreme as the unchallenged center of legal and political power. I am convinced that when the colonial powers pressed for these reforms, they did so without understanding either the dimensions or the ramifications of these changes. They surely did not realize that in doing so they were introducing a deadly combination that would one day produce a troubled and explosive area of the world. This effort at pushing traditional Islamic law aside and rendering it inoperable if not defunct should have alerted many to the fact that not only had the rule of law come to an end but that a major gap, a virtual black hole, had fairly suddenly been

12. On these and other "reforms," see NORMAN ANDERSON, *LAW REFORM IN THE MUSLIM WORLD* (1976); N.J. COULSON, *A HISTORY OF ISLAMIC LAW* (1964).

created without any real substitution or replacement. On the other hand, with the colonialist creation of the nation-state in the Muslim world, from Syria to Morocco, and from Iraq to Malaysia, a new political order was allowed to emerge without the benefit of the traditional legal structures that had systemically controlled the access by political authority to real wealth (mostly concentrated in civil society but administered by the traditional legal profession) as well as to legal and absolute political power. In other words, there no longer was an independent legal system that could restrain the powers of the new autocracies. And to make things far worse, these autocracies harnessed the best of technology and tools of modernity to enhance their dictatorial regimes, with brutal and tragic consequences. Small wonder then that of the 53 member-states of the Organization of Islamic Congress none is a true, real, or functioning democracy. The majority is ruled by truly oppressive regimes, and any claim they may have made in exhortation of Islamic law has been superficial and ultimately designed to acquire what has been a thwarted political legitimacy. With the exception of only a few cases, Islamic law has meant little else to these regimes than chopping off of hands, the stoning of victimized women, and public floggings. It is a sad comment that these harsh penalties have come to embody and symbolize the vast entity that we call Islamic law.

There is no doubt that the majority of Muslims in today's world live in fear—a sad state of existence indeed. Any enlightened world traveler who cares to know what the average Muslim thinks and feels will soon realize the extent of this fear. But this fear is also closely combined with a sense of alienation—primarily alienation from the world of modern culture which is by and large viewed as having wrought great harm to the indigenous cultures of Muslims and to their everyday lives. The century between the 1870s and 1970s tells a story of colossal alienation whereby Muslims were systematically exposed to a process of deprivation, first of their religious values and second of their native, age-old culture. And let there be no doubt that the decimation of their traditional law is largely responsible for both forms of alienation and deprivation. In fact, there is no other way of explaining the recent rise of the Islamist and fundamentalist movements throughout the Muslim world. The Iranian revolution was merely the first of a series of popular reactions affirming the so-called “resurgence of fundamentalist Islam.” The trend continues unabated. During the last year or two, we have seen a significant increase in the size and power of Islamic and Islamist movements. Recently, the Islamists won 19 out of 40 seats in the Bahraini elections. The Islamist party in Egypt now stands next in size to the ruling nationalist party. In Morocco's recent elections the Islamists gained 42 parliamentary seats, whereas in the previous elections they had occupied only 14. The Algerian case is too well known to rehearse here. In Pakistan, the two major provinces bordering on Afghanistan are ruled by Islamist parties. In Turkey, said to be the only formal democracy in the Muslim world, the ruling party elected recently is the Welfare Islamic

Party. And we need not speak of the Sudan, Pakistan, Saudi Arabia, and other like countries, long known for their Islamist regimes.

What I would like to stress is that the alienating experiences of the century preceding the 1970s produced grave and fierce reactions that are readily explicable. These reactions obviously do not stem from a particular genetic make-up, nor are they whimsical or arbitrary. The fact that they are unprecedented in Islamic history—and they are—is an eloquent and decisive confirmation that the so-called “roots of Muslim rage” must be sought in the encounter between the Muslim world and the European powers (now seen as replaced by the United States) over the last century. But what specifically is it that lies at the root of this new phenomenon of Muslim discontent?

I have intimated that the decimation of religious law was the double-edged weapon that the nation-state—and the colonial powers before it—wielded to accomplish a decisive transfer of power from the hands of the Islamic legal profession to a secularist base of state power. Through a total displacement of traditional, religious law by a state apparatus possessing exclusive legal and political powers, the mission was completely—but in the long run unsuccessfully—accomplished. Unsuccessfully, because the changes foisted upon Muslims dictatorial and highly oppressive regimes that replaced an indigenous law according to which Muslims lived—and lived well—for centuries. To make things worse, they gave rise to tyrannies that had no other sanction than brutality and willful inhumanity. The constitutions that protect individual rights and freedoms in the West have been employed in the case of Islam as nothing less than efficient means to enhance the powers of the ruling class, to crush the democratic process and to disband parliaments. This is not to say, however, that Muslim discontent is not closely linked to the international and regional politics of the ruling autocracies in their countries and to the foreign policies of powerful nations—policies that they deem aggressive and detrimental to them and to issues that they care deeply about. This is undeniable. But at deeper psychological and cultural levels, the alienation stems from a severe disconnection with God; a connection that they have come to experience upon their encounter with the West, with modernity and its hegemony.

I said that Islam is a religion of law, and this is a fact of crucial importance. Islam means nothing if religious law were to be extracted from it. Accordingly, to be a Muslim means to live by the law. Unlike Sunday prayer, which is the Christian's main ritual connection to God, a Friday prayer, for the Muslim, will not do. There is so much more that is needed, a legal ritual, a divine law, a way of life and, in short, a comprehensive system of belief and practice that generates an immediate connection between the Muslim individual and his Lord. This has been the reality of Muslims for over thirteen centuries, a reality that had continued uninterrupted in the ancient Semitic Near East from the time of Hammurabi. To say that a millennial genealogy positing an intimate

connection between law and ancient divinities had long persisted in Near Eastern cultures is merely to state the obvious.

Nonetheless, the fundamental and structural impact of modernity on the Islamic world is undeniable. Whatever the Semitic-Islamic past had been, it has changed irrevocably. Modernity is here to stay, and whether or not today's Muslims have articulated their problems in terms of modernity and its impact, the fact remains that they are now struggling with the new facts on the ground. An important aspect of their struggle is manifest in the endless attempts to make sense of their new, modernized reality and the tradition and religion to which they are so attached and through which they continue to define themselves. The story of Islam in the modern world is the story of a frustrated, but not hopeless, synthesis between the forces of tradition and those of tenacious change; between religion and secularism; between individualism and communalism; between political liberalism and nomocratic deism; and, fundamentally, between cultural humanism and a divinely centered universe.

The break-up of the traditional social, economic, legal, and other structures has created a multiplicity of Muslim discourses, all of which call for different solutions to the predicament. For analytical purposes, it is possible to identify five representative camps, the first of which, the secularist, advocates a complete break with religion and generally embraces modernity and the West without much qualification. Its advocates usually hail from amongst the highly educated, urban upper bourgeoisie. This camp can be immediately precluded from consideration, since it proved insignificant even during its heyday in the 1950s and 1960s, and is entirely marginal today. The second camp is what I term the traditionist, which calls for a provisional acceptance of things modern in recognition of their inevitable permanency in the lives of Muslims. This camp, which represents the majority of ordinary Muslims as well as the surviving but marginalized pockets of the educated, religio-legal class, has not shown adequate awareness either of the structural and fundamental effects of modernity or of their own past. To the members of this camp, modernity is an indistinct phenomenon and their past is a myopically perceived image, justifying anything that the present happens to offer. An index of their perceptions is their insistence on religion as a guide to life and an incoherent acceptance of modern ideas and institutions. But this camp in particular is steadily losing members to the third camp, the Islamist, which vehemently calls for a revival of puritanical ideology. In reality, however, this ideology is a newly constructed version of Islam that does not necessarily have much to do with what the faith, at least from a scholarly perspective, was really all about. The membership of this camp comes from every corner of Muslim societies, from the street, the universities, the lower and upper social classes, as well as from the ruling elite and parliaments. The fourth camp is composed of the Muslim Liberalists (of whom we shall say more later)—a tiny minority of intellectuals with a strong, albeit controversial voice.

Finally, the fifth camp is the modernist. Its social make-up is partly the educated class with significant support from the ruling elites. It tends to embrace modern, secular institutions and ideas, but attempts to clothe this enthusiasm with a veneer of Islamic values. In other words, this camp accepts Islam as a nominal entity, very much in the same way that the Christians of the West accept Christianity in a world permeated by trenchant secularism, humanism, capitalism, and much else that is distinctly modern.

If there is a common denominator that brings the last three major camps together, it is that they are all searching for a solution to their predicament, namely, making sense of their lives and existence in light of the contradictions that the modern world has superimposed on them. Moreover, a significant part of their discourses has, understandably and predictably, focused on the legal aspects of this solution. Hence, the endless proliferation of books and tracts on how to reform Islamic law. The modernist camp, which is characterized by its manifestly nominalist bent, stands at a disadvantage in terms of discursive formations. Thus far, it has been unable to articulate its ideals beyond the actual practice of its members who lead non-religious lives. This is also true of the secularist camp.

What remains are three discursive strategies that have yielded the vast bulk of the so-called "reformist" theories. The first of these is the utilitarian approach, advocated mainly by the traditionalists. In line with their relatively facile adaptation to modernity, they resort to what had earlier been a minor concept in traditional law, namely, that necessity renders lawful what is otherwise impermissible. This legal precept had originally enjoyed only a limited application, permitting, for instance, the consumption of unlawfully slaughtered animals under circumstances of hardship, such as when survival is at stake. The traditionalists opted for a dramatic expansion of the principle, arguing that today's Muslims find themselves coerced into a modern way of life hardly of their choice, a lifestyle that must be lived and lived lawfully out of necessity. This approach is now almost a century old, but it has proven unsuccessful and has lost much of its appeal. The main objections are that, on the one hand, it is highly utilitarian while, on the other hand, it converts a minor principle of Islamic law in such a manner as to allow this very principle to set aside Islamic law in its entirety.¹³

The second theoretical approach may be termed the literalist, which aspires to impose a law based on, or modeled after, the same hermeneutical principles of traditional law. This approach appears to have the support of the Islamists whose desire to restore a strictly religious law is driven by a certain puritanical conception of history. But the realities of modern life make it exceedingly and increasingly difficult to realize such an approach, at least without profound contradictions, as is the case with the Islamic Republic of Iran. Muslim women in many Muslim countries,

13. For a survey of approaches, see HALLAQ, *HISTORY*, *supra* note 4, at ch. 6.

for instance, are no longer subservient to men. They are highly educated; they have joined the working force; they occupy some of the highest political offices in their lands; and they have become economically independent. This reality, even without the profound social and other implications arising from it, poses serious problems for any literalist reading of the legal sources, however flexible and lenient this reading might be. The reality of today's Muslim women is simply incompatible with what was literally prescribed for them in the Quran and the Sunna.

The third theoretical approach may be termed the Islamic liberalist path, an approach that is committed to what I characterize as the spirit (in opposition to the letter) of the law as embedded in the revealed texts. The advocates of this approach seek to uncover the underlying divine wisdom or the rationale behind the law, thus applying a certain interpretation of the divine intention to modern situations. Thus, if the traditional sanction of marriage to four wives is seen, according to their reading, as specifically aimed at providing the shelter of family life to widows, whose only hope may have been wedlock with a well-to-do man, then such a Quranic permission is no longer tenable in a modern society where widows can remarry in perfect monogamy or where the state can provide for them as part of a network of social welfare. Likewise, if the testimony of two women was considered equal to that of a single man because women were unschooled and forced to live in domestic seclusion, and were therefore deemed inexperienced in public life, the modern Muslim woman is educated and active outside the home—qualities that endow her with the same legal status and capacity of men. This approach, I believe, is the most promising, and it would appear that there is no reason why it should not succeed. In reality, however, this approach (and the theories it engaged) is effectively an outcast. Its advocates are a few in number, and live either in total isolation or in exile.¹⁴ One of the main objections against it is that it is so arbitrary: the divine word can be manipulated into a particular meaning as easily as into that of its opposite. The divine word, critics would say, is not and cannot be so malleable.

A nagging question about the effects of these theories and approaches is: To what extent were they, or any of them, incorporated into practice? The answer is fairly simple. To the partial exception of the utilitarian approach, none of these reformist theories, generally speaking, finds expression in the legal realities of the Muslim world. They remain no more than ink on paper. The literalist and utilitarian approaches have failed to provide convincing and articulate arguments capable of finding popular appeal. The literalists dismiss modernity and the realities it has created, and their solutions are riddled with contradictions and difficulties. The utilitarianists, on the other hand, are viewed as having subverted the fundamental principles of the sacred law.

14. *See id.*

Most importantly, however, there exists a total disconnection between any of these voices on the one hand, and the governments' legal policies, on the other. Seen as an oppressor of its own people as well as a pawn of imperial interests, the state in today's Muslim world is anathema. The point I wish to make is that the transfer of control over law from the hands of the traditional legal profession to those of the state represented the most important phenomenon of so-called modern legal reform, one that signified simultaneously the eternal loss of epistemic authority and the dawning of the much-abhorred authority and, indeed oppression, of the nation-state. The emergence of the state as the source of legal power (in opposition to authority) is seen as doubly repugnant because the state not only appropriated law from the religious lawyers (whose roots were in the community) but it also showed itself for over a millennium to be an entity severely lacking in religiosity, piety and rectitude. If Islamic law had represented to Muslims the best of religion and religious life, then the state stood for the worst of worldly temptation, corruption, and, recently, oppression. With the appropriation of law in the wake of the reforms, the state was seen to have sunk to even greater depths of repugnancy. It has not only substituted God's law with a non-religious law, but has chosen none other than the law of the colonizers as its replacement.

It is this complex of problems that we are facing today, and they are problems that concern everyone. Their ramifications are many, ranging from desperate calls on the Muslim street to violent acts of destruction, whether in Khartoum, Kabul, or New York. And let there be no doubt that, at the end of the day, the culprit is the rupture of history. The abrupt disconnection from the past, from its legacies, institutions, and traditions, lies at the heart of these problems. As one Muslim put it recently, to drive a car safely, one should always be looking ahead but never without keeping an eye on the rear mirror. This metaphor is apt. The question now is: Can Muslims retrieve some of their past to remedy their present and future problems? Will their governments heed their calls? And will they have any sympathetic hearing from outside observers or from those who control their lives and destinies?
